

ALLENTOWN COMMERCIAL AND INDUSTRIAL DEVELOPMENT AUTHORITY

Guidelines for Obtaining Financing for Projects in the City of Allentown's Neighborhood Improvement Zone

Purposes of These Guidelines

These Guidelines provide information for businesses, developers and other entities (collectively, "Applicants") seeking financing from the Allentown Commercial and Industrial Development Authority (the "Authority") for qualified projects within the Neighborhood Improvement Zone ("NIZ") within the City of Allentown (the "City"). Applicants are encouraged to improve and develop properties within the NIZ by utilizing financing available pursuant to the NIZ Act (described below).

Included in these Guidelines is background on the creation of the NIZ, the requirements of the NIZ Act, criteria Applicants should consider when seeking financing for a project within the NIZ ("Project") through the Authority, and procedures for applying for financing. As further described herein, the financing process includes the following three stages of review and approval by the Authority:

1. ***Qualification Stage.*** An initial, non-binding confirmation of interest by the Authority to an Applicant. In this stage, a review of a proposed Project is provided by the Authority to determine if the project meets the preliminary criteria and requirements to receive NIZ financing. Once the Qualification Stage is completed, the Applicant can proceed to the Application Phase.
2. ***Application Stage.*** A formal application for NIZ financing is prepared and submitted by the Applicant for a specific Project or initial phase(s) of a multi-phased Project.
3. ***Closing and Funding Stage.*** This stage includes a closing of financing for an approved application and fund transfers from the Authority to the Applicant of qualified project costs.

Creation and Purpose of the NIZ; Use of Qualified Tax Revenues; Statutory Background

The Authority is a public instrumentality of the Commonwealth of Pennsylvania (the "Commonwealth") and is authorized pursuant to the Economic Development Financing Law, 73 P.S. 371 *et seq.*, as amended (the "Financing Law"). In the future, the City may establish another authority to administer financing for the NIZ.

On June 28, 2011, the Authority designated the NIZ within the City pursuant to authorization provided in special legislation enacted by the Commonwealth, Article XVI-B of the Pennsylvania Fiscal Code, 72 P.S. Section 1 *et seq.* (the "NIZ Act"). A copy of the NIZ Act is attached as Annex I.

The NIZ consists of approximately 125 acres located in center city Allentown and along the western side of the Lehigh River. A map showing the boundaries of the NIZ is attached as Annex II.

The NIZ was established for the purpose of revitalization and furthering development and redevelopment in the City. The NIZ Act provides that qualified state and local tax revenues may be used for payment of debt service on bonds or loans issued for the improvement and development of qualified capital improvements within the NIZ. Such capital projects include, but are not limited to, an arena for professional sports and various other uses such as residential, office, commercial, exhibition, hospitality, conference and retail.

The Authority intends to construct an 8,500 seat arena and plans to issue bonds (the “Arena Complex Bonds”) to finalize the project costs of the arena. All qualified state and local tax revenues generated by businesses (including employee taxes) existing in the NIZ as of July 28, 2011 shall be applied to fund debt service on the Arena Complex Bonds.

Qualified Tax Revenues from new businesses starting up or moving into the NIZ within property owned or controlled by Applicants will be available to secure bonds of the Authority issued to finance projects for Applicants. In addition, in certain cases, increased Qualified Tax Revenues resulting from an existing business expansion may also be available to secure new financing.

Disclaimers

These Guidelines are intended for informational purposes only. They are not meant to constitute any contractual offer or promise by the Authority. These Guidelines shall not be construed to limit in any way the discretion of the Authority’s board. To the extent of any inconsistency between these Guidelines and the provisions of the Financing Law and the NIZ Act as they may be amended or interpreted, the provisions of such laws shall control. These Guidelines speak as of their date and while the Authority intends to update them as appropriate, Applicants should rely upon the advice of their own advisors with respect to matters of law and business judgment in any way relevant hereto.

Questions and Requests for Additional Information

Should you have any questions regarding these Guidelines, the NIZ, available financing through the Authority or otherwise, please contact the Authority’s Executive Director, Scott Unger, at (610) 435-8890.

Common questions may be addressed in future Authority guidance.

Projects Eligible for NIZ Financing by the Authority

The following is a summary of significant guidelines and requirements for new development projects. These are solely for discussion purposes by the Authority.

Eligible Applicants

Applicants may include both for-profit and not-for-profit entities as well as individuals.

The Authority will consider applications from joint ventures. When submitting joint proposals, both parties must provide all applicable application documents.

Eligible Projects

In order to be eligible for NIZ financing through the Authority, all projects must be in compliance with the City's zoning ordinances (City Ordinance No. 14835, which may be accessed on the City's website at www.allentownpa.gov) and the City's current and future development plans for the NIZ. Further, the project must be approved by the City's Director of Planning.

Timelines for Completion of Projects and Expenditure of Funds

All projects generally must be completed within 24 months of receipt of financing. Applicants should reflect this in their project timeline. However, the Authority may approve a different timeline depending on the size and scope of the Project.

Fees and Costs

The Applicant shall pay a fee to the Authority upon closing of the financing of 20 basis points on the amount financed with a minimum \$5,000 fee applicable to all financings. This Authority fee will not be payable if the financing does not close.

The Applicant shall also reimburse the Authority and the City for all costs related to the review and processing of any application for financing and for transaction costs related to a loan. Such reimbursement shall not be conditioned upon loan closing. The Applicant shall reimburse the Authority for all costs related to the loan, including the ongoing monthly review process by the Authority. A fee structure will be utilized to reimburse such costs that is consistent with similar Authority fee structures in the Commonwealth

The Applicant, not the Authority or City, is responsible for its own expenses related to the application and financing Not more than 2% of the proceeds of such financing may be applied to closing costs and fees.

Criteria that the Authority Will Consider in Selecting Projects for Financing

The Authority will consider the following criteria when reviewing an application for NIZ financing:

- *Financial Strength of Applicant; Ability to Maintain Working Capital and to Operate Project in Start-up Period; Completion Risk/Risk of Obtaining Any Funding Necessary for Additional Phases of the Project.* In reviewing an application, the Authority will consider the Applicant's history developing similar projects and the Applicant's financial history, as well as any issues specific to the proposed Project that may pose a risk to completion of the Project or maintaining working capital to operate the Project in the start-up period. Based on the Applicant's financial history, the Authority will also consider whether the Applicant would be able to secure additional funding for the Project should there be cost overruns or if additional phases of the Project are contemplated.
- *Job Creation.* The Authority will take into consideration the number and types of jobs the Project is expected to generate within the NIZ and the City and the degree to which the Applicant will hire workers living in close proximity to the NIZ.
- *Occupancy Levels.* The Applicant should demonstrate that facilities financed by the Authority will reach at least fifty percent occupancy within one year of the issuance of a Certificate of Occupancy.
- *Project's Demand Upon Municipal Services.* The Applicant should provide information detailing how it will offset the increased demand for municipal services such as utilities, public safety and public works required for its Project.
- *Certified Minority or Women Business Enterprise (MBE/WBE) Participation.* Preference will be given to Applicants that are MBE/WBE certified in the Commonwealth or use MBE/WBE certified subcontractors in the construction of the Project.
- *Locally or Domestically Sourced Materials.* Preference will be given to Applicants whose Project plans involve the use of local or domestically sourced materials.

Ineligible Projects

Projects must be in compliance with the Financing Law. Projects will not be approved if they would not be in compliance with any federal, state or local laws.

The following types of projects are ineligible for Authority NIZ financing:

- financing acquisition of a project in excess of the project's cost;
- projects not consistent with the City's future or amended Master Development Plan for the NIZ; and
- any project not located within the NIZ.

Certain Types of Projects May be Disfavored in Relation to Projects of Competing Applicants

The following types of projects, while eligible for Authority financing, may be disfavored in relation to proposed projects of other Applicants and may require a more substantial justification to the Authority:

- projects involving uses that would require a variance or other action because they are not consistent with the City's zoning ordinances and the City's future or amended Master Development Plan for the NIZ;
- projects which may not be consistent with the desired character for the developed NIZ due to the proposed materials, accessory features, fixtures or design elements;
- projects which may create concerns related to traffic, mass transit or pedestrian access, lighting, view obstructions, noise, etc.; or
- projects which entail patterns of usage which may require markedly increased demand for public services (e.g., crowd management during off-hours requiring overtime from public safety officers).

**Projects Costs Ineligible for NIZ Financing by the Authority
and Financing Requirements**

Ineligible Project Costs

The following types of project costs are ineligible for Authority NIZ financing:

- Working capital
- Rolling stock
- Inventory/receivable financing
- Relocation costs
- Molds and dies

Permissible Parameters for Authority Financing; Security

- *Authority Financing will generally be taxable for Federal Income Tax Purposes (Tax-Exempt for Certain Commonwealth or 501(c)(3) Purposes):* [text]
- *Prepayment Provisions:* Subject to the requirements of any particular lender, the Authority imposes no pre-payment penalty.
- *Mortgages, Security Interests—Lien Position:* Permitted subject to Authority approval.

Insurance Requirements

The Authority may impose insurance requirements with respect to the Project, including but not limited to general liability and completion bonds with the Authority named as an insured. If insurance is required by Applicant's lender, the Authority may accept that coverage if the Authority is named as an additional insured.

Process for Obtaining Authority Financing of a Project in the NIZ

Stage 1: The Qualification Stage

The key components of the Qualification Stage are as follows:

- A. An initial non-binding confirmation of interest by the Authority is provided to the Applicant by the Authority commencing an initial review of the proposed Project(s). The initial review will verify the following criteria are met:
 - i. The property to be developed is located within the NIZ.
 - ii. The Applicant must prove actual or equitable ownership or have a binding option to purchase such property of adequate duration to acquire title by the time of financing. The Applicant may be asked to provide appraisals for property to be acquired or deeds for property it owns.
 - iii. The Project will be developed in a manner consistent with the definition of “Facility Complex” in the NIZ Act. “Facility Complex” is defined to comprise a development or complex of residential, commercial, exhibition, hospitality, conference, retail and community uses.

Following a favorable initial determination by the Authority during the Qualification Stage, the Applicant can proceed to the Application Stage

Stage 2: The Application Stage

The key components of the Application Stage are as follows:

- A. A formal application for NIZ financing will be prepared and submitted by the Applicant.
 - i. The Applicant must provide a complete description of the project, including a description of the property and its ownership interest, milestones, timelines, subcontractors, materials, any potential financing or timing concerns, and the number of jobs to be created by the project.
 - ii. The Applicant must provide a description of the ownership and management of the Applicant; resumes for key personnel of the Applicant indicating their qualifications; background on the Applicant, including a company history and profile and a list of the Applicant's four largest customers and suppliers; a list of subcontractors and their qualifications; and any other information requested by the Authority. The Applicant shall submit company information and allow a third-party background check to be conducted.
 - iii. The Applicant must provide an initial project budget including all sources of financing and expenditures. A term sheet from the lender should also be submitted.
 - iv. The Applicant must provide projected income and cash flow statements and balance sheets for the present fiscal year and three years forward. Start-up businesses should provide a monthly cash flow statement for the first year or until the business is projected to reach a break even point. List all material assumptions included in the projections.
 - v. Applicant must provide three years' audited or reviewed financial statements or Federal tax returns and all supporting schedules. Interim financial statements, including balance sheet and income statement dated within 90 days of the application are also required.
 - vi. The Applicant must demonstrate experience and capacity to develop a project of the scale and size that they propose. The Applicant must provide a list of related projects in progress or completed within the last five years and details of those projects including budgets and a description of any significant delays or cost over runs experienced in the construction of such projects.
 - vii. The Authority may require the Applicant to cause its lender(s) and/or investors to submit underwriting information and analysis to demonstrate overall project feasibility and the financial capability of the Applicant to complete the project.

- viii. The Applicant must demonstrate the plan's compliance with the City's future or amended Master Development Plan for the NIZ and the City's zoning ordinances.
 - ix. The Applicant must provide conceptual drawings of the proposed Project. The Authority reserves the right to comment upon and approval of all design and engineering.
 - x. The Applicant must submit a reasonably detailed feasibility analysis, including market research and financial analysis to the Authority for review, demonstrating long term viability of the proposed development.
 - xi. Applicant must provide an estimate of the projected incremental new NIZ revenue that will be generated by the Project to be used to reduce the funding or reinvested in the NIZ. The Authority may require a third-party review of such estimate to be provided by the Applicant.
 - xii. With the assistance of the Authority, the Applicant must complete an application to the PA Department of Community and Economic Development which must approve the Authority's financing.
- B. Depending upon the nature of the particular project and financing sought by an Applicant, the Authority may request or require certain additional information related to, among other things, how the Project may be integrated with or impact existing uses within the NIZ. Following are examples of additional information which may be requested:
- i. Phase I/Phase II or other environmental impact reports or assessments;
 - ii. parking/traffic impact studies; and/or
 - iii. any other information the Authority requests.

Following approval of the application, the Authority will adopt a resolution approving the Project and the financing. A signed commitment letter from the lender will be required beforehand. The Applicant may then proceed to the Closing and Funding Stage.

Stage 3: The Closing and Funding Stage

The key components of the Closing and Funding Stage are as follows:

- A. The Authority shall be the borrower or issuer on any loan or bond under the Financing Act and the NIZ Act. If the project will be funded by a lender other than the Authority, the Applicant shall secure financing for its project and provide all necessary collateral, guarantees and credit enhancement that the lender may require. The Authority shall be the Borrower under such documents. Provided that the Authority's obligations remain limited as described herein, the Authority expects to be able to accommodate different credit structures. Applicants should have the Authority included in receipt of loan documentation during negotiations. However, the Authority does not expect to be involved in negotiation of business terms between the lender and Applicant. The Applicant must provide the Lender's commitment letter or firm term sheet to the Authority during the negotiation process for the Authority's review and approval. The Applicant shall indemnify the Authority from and against any and all claims, losses, damages or liabilities relating to the loan or the Applicant's project. Among other things, such indemnifications shall extend to securities law and environmental claims and proceedings. The Authority expects to fund Applicant's projects from loan proceeds on a periodic basis as approved capital expenditures are incurred. Thus, most loans would be expected to be draw-down loans. The Authority reserves the right to review and suggest modifications of all loan documents and project expenditures.
- B. The revenues available for debt service on the Authority's obligations shall be limited to the qualified tax revenues under the NIZ Act paid by qualified businesses in the Applicant's Project that have moved into the NIZ after July 28, 2011. (Increases in tax revenue generated by taxpayers who moved into the NIZ on or before July 28, 2011 may be available to support future financings to the extent such revenues are not pledged as revenue to other projects of the Authority.) Except in the case of short-term, interim pre-development funding, a percentage of qualified tax revenues from businesses moving into the Applicant's Project shall not be pledged to the lender. This percentage (the "Authority Retention") shall be determined by the Authority depending on the size and scope of the Project. The Authority reserves the right to use the Authority Retention for any permitted purposes under the Act, including pledging it to any obligations of the Authority.
- C. The Applicant shall either contribute equity for the Project in a sufficient amount to support the underwriting of the Project, as determined by the Authority, or provide a full-recourse guarantee by it and its principals on all or portion of the debt service, as approved by the Authority.
- D. The Applicant and the Authority will enter into a funding agreement for the particular project outlining requirements related to the development of the financed project (the "Funding Agreement"). The Applicant shall provide the Authority with a detailed project budget as well as other documentation the Authority may require, including, but not limited to, a schedule of project milestones and related timelines, in order to review,

inspect and fund the project. Any Funding Agreement shall be governed under Pennsylvania law and subject to the Authority and City's standard policies related to, among other matters, sub-contractors, procurement, forum selection, jury trial, indemnification and liquidated damages.

- E. If an Applicant utilizes funding under the NIZ Act to purchase properties (including long-term leasehold interests), the Authority or the City shall have the right to purchase such properties at the Applicant's acquisition cost if the Applicant does not proceed to develop the properties within 24 months. Such properties may then be sold by the Authority to pay down debt associated with them. Such provisions will be specified in greater detail in the Funding Agreement with Applicant.
- F. As set forth in the Funding Agreement, if the Applicant abandons or intends to transfer the Project to another party, the Authority reserves the right of first refusal to purchase the Project and any related property from the Applicant.
- G. At closing, the Applicant must provide the following:
 - i. a current good standing certificate from the Commonwealth;
 - ii. certification that the Applicant is:
 - a) qualified to do business in Pennsylvania;
 - b) current in payment of all federal, state and local taxes;
 - c) in compliance with all applicable federal, state and local laws and regulations;
 - d) not in bankruptcy, in default on any loans or other extensions of credit, and has no unsatisfied judgments against it; and
 - e) shall comply with all other provisions under the NIZ Act and other applicable law, including the City's zoning ordinances;
 - iii. a summary of any outstanding litigation;
 - iv. certification that all property subject to development in the NIZ is in compliance with environmental regulations and provide a site assessment for each property; and
 - v. an opinion of counsel to the Applicant.
- H. Transfers of approved project funds from the Authority to the Applicant will occur monthly or as agreed to. The Authority or its representative will review and approve all cost documentation submitted by the Applicant on a monthly basis or as needed prior to funding. All cost documentation must be certified by an Authority-approved third party inspecting engineer on a monthly basis prior to fund transfer.

- I. The Applicant shall pay a fee to the Authority upon closing of the financing. The Applicant shall also reimburse the Authority and the City for all costs related to the review and processing of any application for financing and for transaction costs related to a loan. For more information about fees, please see “*Projects Eligible for NIZ Financing by the Authority – Fees and Costs*”.
- J. Applicants should consult with their own tax advisors regarding the federal and state tax implications of the receipt of Authority NIZ funding.

Approved October 25, 2011

Annex I

Neighborhood Improvement Zone Act

Approved October 25, 2011

Annex II

Map of City of Allentown Neighborhood Improvement Zone Boundaries